

**SECTION XXVII IMPACT FEE ORDINANCE FOR PUBLIC SCHOOL FACILITIES** (Added March 2000, amended March 2005)

**A. APPLICABILITY OF ARTICLE**

The Town of Newton has developed a methodology for the assessment of impact fees for a proportionate share of the public school capital facilities of the Sanborn Regional School District. On the basis of this methodology, new development in Newton shall be assessed a public school impact fee that represents its proportional share of demand on the capital facilities of the District. The following regulations shall govern the assessment of impact fees for public school facilities in order to accommodate increased demand on the capacity of these facilities due to new development. These regulations are authorized by RSA 674:21, V, and other pertinent state law, as an innovative land use control. The administration of these regulations shall be the responsibility of the Board of Selectmen.

**B. FINDINGS**

In review of its school enrollment growth and the public school capacity available to Newton from the Sanborn Regional School District of which it is a member, the Town of Newton hereby finds that:

1. Each type of new residential development in Newton, with the exception of those having lawfully restricted occupancy that will exclude school age children, will create a need for the construction, equipping, or expansion of the public capital facilities of the Sanborn Regional School District to provide adequate public education for Newton pupils.
2. Recent and anticipated growth rates in public enrollment and associated improvement and renovation costs would necessitate an excessive expenditure of public funds in order to maintain adequate school facility standards and to promote and protect the public health, safety, and welfare.
3. The assessment of impact fees is one of the methods available to ensure that public expenditures are not excessive and that new development will bear a proportionate share of the cost of public school capital facility costs necessary to accommodate such development.
4. The Sanborn Regional School District, of which the Town of Newton is a member, provides an efficient and effective means for the towns of the District to provide educational services to the citizens of the District.
5. The impact fee methodology entitled Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended) prepared for the Town of Newton, represents a reasonable, rational and proportional method for the assessment of growth-related school facility costs of the District. Based on this methodology, school impact fees will not exceed the costs of:
  - a. Providing additional public capital facilities necessitated by new residential development in Newton; and/or
  - b. Compensating the Sanborn Regional School District for school facility capacity that it provided in anticipation of new residential growth and development in Newton.
6. An impact fee ordinance for school capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Newton.

**C. DEFINITIONS**

1. District – The Sanborn Regional School District, of which Newton is a member municipality.
2. Fee-payer – The applicant for the issuance of a building permit which could create new

development.

3. New Development – An activity which results in
  - a. The creation of a new dwelling unit or units; or
  - b. The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units.

D. ASSESSMENT OF IMPACT FEES (Amended March 2005)

1. Impact fees shall be assessed to new development to compensate the Town of Newton for the proportional share of the capital facility costs of the District generated by new development in Newton, including public school facilities to be constructed, or which were constructed in anticipation of new development.
2. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan.
3. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for the issuance of a building permit.
4. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected at the time when the development is ready for its intended use. However, the Board of Selectmen may negotiate an alternative schedule for collection with the fee payer.
5. The Board of Selectmen and the fee payer may establish an alternate, mutually acceptable schedule of payment of impact fees. If an alternate schedule of payment is established, the Board of Selectmen may require the applicant to post security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of assessed impact fees.
6. No Certificate of Occupancy shall be issued for new development which is subject to impact fee assessment until the fee is paid in full.
7. Any person may request a full or partial waiver of school facility impact fees for the number of residential units that are lawfully restricted to occupancy by senior citizens age 62 or over, or to households with at least one person age 55 and over, as applicable, where such units are maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. School impact fees may, in the discretion of the Board of selectmen, be waived for such units within a complying development where the units are restricted by age for a period of at least 20 years.
8. A person may request a full or partial waiver of school facility impact fees from the Board of Selectmen for any residential units which have been approved for construction prior to the effective date of this article if the same are determined to be entitled to the four year exemption provided by RSA 674:39, to the extent that exemption is available pursuant to that statute. This waiver shall not be applicable to residential units in phases of a phased residential development project where active and substantial development, building and construction has not yet occurred in the phase in which those units are to be constructed.
9. Prior to acting on a request for waiver of impact fees under the provisions of paragraphs 3 or 4 of this section, the Board of Selectmen shall submit a copy of the waiver to the Planning Board for its review and comment, and the Planning Board shall set forth its comments in writing. In the process of its review, the Board of Selectmen shall set forth in writing its findings on the Planning Board's comments to the extent that such comments are not directly incorporated into the decision on the request for a waiver.

E. COMPUTATION OF IMPACT FEE

1. The amount of each impact fee shall be assessed in accordance with a report entitled Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended), prepared for the Town of Newton and as adopted for the purposes of impact fee assessment by the Board of Selectmen.
2. In case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessment for the new use as compared to the highest impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Ordinance.

F. APPEALS

1. If a fee-payer elects to appeal the amount of the impact fee, the appeal shall be made to the Zoning Board of Adjustment. In support of such appeal, the fee-payer shall prepare and submit to the Zoning Board of Adjustment an independent fee calculation or other relevant study for the new development activity which is proposed. The independent study by the fee-payer shall set forth the specific reasons for departing from the adopted schedules and methodologies of the Town. The Board of Adjustment shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the fee-payer.
2. The decision of the Zoning Board of Adjustment may be appealed to the Superior Court as provided by RSA 677:2-14.

G. ADMINISTRATION OF FUNDS COLLECTED

1. All funds collected shall be properly identified and promptly transferred for deposit into a separate impact fee account for public school facilities. This impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues accrue to the General Fund.
2. The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Article for each building permit so affected for a period of at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
3. Impact fees collected may be spent from time to time by order of the Board of Selectmen and shall be used solely for the reimbursement of the Sanborn Regional School District for the cost of public school capital improvements made by the District in anticipation of the needs for which the impact fee was collected.
4. In the event that bonds or similar debt instruments have been or will be issued by the District for the funding of capacity-related improvements to public schools, impact fees may be transferred to the District to pay debt service on such bonds or similar debt instruments.
5. At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen, giving a particular account of all impact fee transactions during the year.

H. REFUND OF FEES PAID

1. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:
  - a. The impact fee has not been encumbered or legally bound to be spent for the purpose for

which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or

- b. The District has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate any of the non-impact fee share of related capital improvement costs thereby permitting the capital improvement or capital improvement program for which the impact fee was collected to be commenced. If any capital improvement or capital improvement program for which an impact fee has been collected has been commenced either prior to, or within six years from the date of final collection of an impact fee, that impact fee shall be deemed to be encumbered and legally bound to be spent for said capital improvement or capital improvement program and shall not be refunded, even if it is not fully expended within the six year period.

2. The Board of Selectmen shall provide all owners of record who are due a refund written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

#### I. ADDITIONAL ASSESSMENTS

Payment of the impact fee under this article does not restrict the Town or the Planning Board from requiring other payments from the fee-payer, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

#### J. PREMATURE AND SCATTERED DEVELOPMENT

Nothing in this article shall be construed so as to limit the existing authority of the Newton Planning Board to deny proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Newton Zoning Ordinance, or the Newton Planning Board Site Plan Review Regulations or Subdivision Regulations, or which may otherwise be lawfully denied.

#### K. REVIEW AND CHANGE IN METHOD OF ASSESSMENT (Amended March 2005)

The Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended) and the associated fee schedule shall be reviewed periodically by the Board of Selectmen. Such review shall take place not more than five years from the initial adoption of this ordinance, nor more frequently than annually. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be reviewed by the Planning Board prior to its final consideration by the Board of Selectmen. The review by the Board of Selectmen may result in recommended adjustments to the methodology and related fees based on the most recent data as may be available. The replacement or amendment of the impact fee methodology shall not be effective until it shall have been the subject of a public hearing before the Board of selectmen, noticed in accordance with RSA 675:7.

### **SECTION XXVIII PERSONAL WIRELESS SERVICE FACILITIES** (Added March 2002)

#### I. AUTHORITY

This ordinance is adopted by the Town of Newton at the 2002 Town Meeting, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21, procedurally under the guidance of 675:1, II and in accordance with RSA 12-K.

#### II. PURPOSE AND GOALS

This Ordinance is enacted in order to effectuate the following goals and standards in permitting the siting of Personal Wireless Services Facilities (PWSF) in accordance with federal and state law:

- (a) To facilitate the review and approval of personal wireless services facilities by the Town's Planning Board in keeping with the Town's existing ordinances and established development patterns, including the size and spacing of structures and open spaces. This ordinance is intended to be applied in conjunction with other ordinances and regulations adopted by the Town, including historic district ordinances, site plan review regulations and other local ordinances designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development.
- (b) Preserve the authority of Newton to regulate and to provide for reasonable opportunity for the siting of PWSF.
- (c) Reduce adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values. To minimize the visual and environmental impacts of personal wireless services facilities by avoiding the deployment of PWSF's that service substantially the same service area.
- (d) Require, where technically feasible, co-location and minimal impact siting options through an assessment of technology, current location options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- (e) Permit the construction of new PWSF only where all other reasonable opportunities for co-location have been exhausted.
- (f) Require the configuration of PWSF in a way that minimizes the adverse visual impact of the facilities and antennas.
- (g) Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Newton.
- (h) Provide constant maintenance and safety inspections for any and all facilities.
- (i) Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town of Newton to remove these abandoned towers to protect the citizens from imminent harm and danger.
- (j) Provide for the removal or upgrade of facilities that are technologically outdated.
- (k) The regulation of personal wireless services facilities is consistent with the purpose of the Newton Master Plan to further the conservation and preservation of developed, natural and undeveloped areas, wildlife, flora and habitats for endangered species; the preservation and protection of the natural resources of Newton; balanced economic growth; the provision of adequate capital facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the preservation of historical, cultural, archaeological, architectural and recreational values.

### III. APPLICABILITY

#### (a) Public Property

Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects subject to state law and local ordinance, to seek the partial exemption from this Ordinance and provided that the facility will be at least partially available for public

purpose.

(b) Amateur Radio; and/or Receive-Only Antennas

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.

Modification of existing amateur radio facilities for commercial use shall require full town review in accordance with this ordinance.

(c) Essential Services & Public Utilities

PWSF shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Sitting for PWSF is a use of land, and is addressed by this ordinance.

#### IV. DEFINITIONS

- (a) Above Ground Level (AGL): A measurement of height from the natural grade of a site to the highest point of a structure.
- (b) Alternative tower structure: Innovative sitting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- (c) Antenna: The surface from which wireless radio signals are sent and received by a personal wireless service facility.
- (d) Average tree canopy height: Means the average height found by inventorying the height above ground level of all trees over a specified height within a specified radius.
- (e) Carrier: Means a person that provides personal wireless services.
- (f) Co-location: The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.
- (g) Elevation: The measurement of height above sea level.
- (h) Environmental Assessment (EA): An EA is the document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.
- (i) Equipment shelter: Means an enclosed structure, cabinet, shed vault, or box near the base of a mount within which are housed equipment for PWSFs, such as batteries and electrical equipment.
- (j) FAA: An acronym that shall mean the Federal Aviation Administration.
- (k) FCC: An acronym that shall mean the Federal Communications Commission.
- (l) Fall Zone: The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

- (m) Functionally Equivalent Services: Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.
- (n) Guyed Tower: A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
- (o) Height: Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- (p) Lattice Tower: A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
- (q) Licensed Carrier: A company authorized by the FCC to construct and operate a commercial mobile radio services system.
- (r) Monopole: The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.
- (s) Mount: Means the structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types.
- (t) Omni directional (whip) antenna: A thin rod that beams and receives a signal in all directions.
- (u) Panel Antenna: A flat surface antenna usually developed in multiples.
- (v) Personal Wireless Service Facility or PWSF or facility: means any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services.
- (w) Personal Wireless Services: Means any wireless telecommunications services, and commercial mobile services including cellular telephone services, personal communications services, and mobile and radio paging services as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332 (c)(7)(C)(i).
- (x) Planning Board or Board: Shall mean the Town of Newton Planning Board and the regulator of this ordinance.
- (y) Preexisting towers and antennas: Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.
- (z) Radio frequency radiation: Means the emissions from personal wireless service facilities.
- (aa) Security Barrier: A locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass.
- (bb) Separation: The distance between one carrier's array of antennas and another carrier's array.
- (cc) Stealth Application: Means, for a PWSF, designed to look like a structure which may commonly be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles, traffic lights, or artificial tree poles. Also means, for a personal wireless service facility one that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure. (Stealth application is often referred to as "camouflaged" technology.)

- (dd) Telecommunications Facilities: Shall mean any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services.
- (ee) Tower: Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

## V. CONDITIONAL USE PERMITS

- a) All proposals considered for development under the Personal Wireless Facilities Ordinance shall obtain a Conditional Use Permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approved use. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.
- b) All applicable standards in this ordinance must be met and/or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.
- c) Decisions

Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

## VI. SITING STANDARDS

- (a) Use Regulations

A personal wireless service facility shall require a conditional use permit in all cases and may be permitted as follows:

- 1) A personal wireless service facility may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower, water tower, cupola or steeple. Such facilities may locate by Conditional Use Permit in all zoning districts within the Town.
- 2) A personal wireless service facility involving construction of one or more ground or building (roof or side) mounts shall require a Conditional Use Permit and may locate in all zoning districts within the Town.
- 3) A personal wireless service facility that exceeds the height restrictions of Section VI (d) may be permitted by Conditional Use Permit in a designated Wireless Service Overlay District as defined by Newton Zoning Map as areas designated as Commercial and Light Industrial/Commercial.
- 4) Principal or Secondary Use: An applicant who successfully obtains permission to site under this ordinance as a second and permitted use may construct PWSF in addition to the existing permitted use. PWSF may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a



tower or antenna complies with local development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. PWSF that are constructed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an "accessory use".

(b) Location

Applicants seeking approval for personal wireless services facilities shall comply with the following:

- 1) If feasible, personal wireless services facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
- 2) The applicant proposing to build a new tower shall submit an agreement with the Town that maximizes allowance of co-location upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs (prevailing rates) to other telecommunications providers. Failure to provide such an agreement is evidence that the applicant's proposed facility will not integrate with the overall telecommunications facility planning of Newton, and grounds for a Denial.
- 3) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this and any other information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with 676:4 I (g).
- 4) If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless services facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.
- 5) The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a building permit and/or conditional use permit.

(c) Co-location

- 1) Licensed carriers shall share personal wireless services facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless services facilities that are stand-alone facilities. All applicants for a Conditional Use Permit for a personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:
  - i A survey of all existing structures that may be feasible sites for co-locating personal wireless services facilities;
  - ii Contact with all the other licensed carriers for commercial mobile radio services operating in the County; and
  - iii Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

- 2) In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Town. The Town may retain a technical expert in the field of RF engineering to verify co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a Conditional Use Permit to an applicant that has not demonstrated that co-location is not feasible.
- 3) If the applicant does intend to co-locate or to permit co-location, the Town shall request drawings and studies which show the ultimate appearance and operation of the personal wireless service facility at full build-out.
- 4) If the Planning Board approves co-location for a personal wireless service facility site, the Conditional Use Permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the Conditional Use Permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved Conditional use permit shall require a new Conditional Use Permit.

(d) Height Requirements

- 1) Height, General: Regardless of the type of mount, personal wireless services facilities shall be no higher than ten feet above the average height of buildings or trees within 300 feet of the proposed facility. In addition, the height of a personal wireless service facility shall not exceed by more than ten feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged such as within a flagpole, steeple, chimney, or similar structure. Personal wireless services facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- 2) Height, Ground-Mounted Facilities: Ground-mounted personal wireless services facilities shall not project higher than ten feet above the average building height or, if there are no buildings within 300 feet, these facilities shall not project higher than ten feet above the average tree canopy height, measured from average ground level (AGL). If there are no buildings within 300 feet of the proposed site of the facility, all ground-mounted personal wireless services facilities shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.
- 3) Height, Side- and Roof-Mounted Facilities: Side- and roof-mounted personal wireless services facilities shall not project more than ten feet above the height of an existing building nor project more than ten feet above the height limit of the zoning district within which the facility is located. Personal wireless services facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- 4) Height, Existing Structures: New antennas located on any of the following structures existing on the effective date of this ordinance shall be exempt from the height restrictions of this ordinance provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility: water towers, guyed towers, lattice towers, fire towers and monopoles.
- 5) Height, Existing Structures, (Utility): New antennas located on any of the following existing structures shall be exempt from the height restrictions of this ordinance provided that there is no more than a twenty foot (20') increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures. This exemption shall not apply in historic districts.

- 6) Height, Wireless Facility Overlay Districts: Where the town establishes Wireless Facility Overlay Districts (as designated on the town zoning map), personal wireless services facilities of up to 150 feet in height may be permitted by Conditional Use Permit. Monopoles are the preferred type of mount for such taller structures. Such structures shall comply with all setback and Conditional Use Permit regulations set forth in this Ordinance.

(e) Setbacks

- 1) All personal wireless services facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.
- 2) In order to ensure public safety, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone."
- 3) In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, personal wireless services facilities and their equipment shelters shall not increase any non-conformities.
- 4) Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.
- 5) In reviewing a Conditional Use Permit application for a personal wireless service facility, the Planning Board may reduce the required fall zone and/or setback distance of the zoning district, if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

VII. DESIGN STANDARDS

Visibility/Camouflage: Personal wireless services facilities shall be camouflaged as follows:

(a) Camouflage by Existing Buildings or Structures

- 1) When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
- 2) Personal wireless services facilities which are side mounted shall blend with the existing building's architecture and shall be painted or shielded with material which is consistent with the design features and materials of the building.

(b) Camouflage by Vegetation

If personal wireless services facilities are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and under story vegetation in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless services facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.

(c) Color

- 1) Personal wireless services facilities which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly attached thereto.
- 2) To the extent that any personal wireless services facilities extend above the height of the vegetation immediately surrounding it, they shall be painted in a color determined best to blend in with the natural surroundings and/or background.

(d) Equipment Shelters

- 1) Equipment shelters shall be located in underground vaults; or
- 2) Equipment shelters shall be designed consistent with architectural styles and materials per the town's site plan review regulations.
- 3) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood.

(e) Lighting and Signage

- 1) Personal wireless services facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed.
- 2) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Town's sign regulations.
- 3) All ground mounted personal wireless services facilities shall be surrounded by a security barrier.

(f) Historic Buildings and Districts

- 1) Any personal wireless services facilities located on or within an historic structure, as designated by the town, shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
- 2) Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.
- 3) Personal wireless services facilities within an historic district shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas within the district.

(g) Scenic Landscapes and Vistas

- 1) Any personal wireless service facility that is located within 300 feet of a scenic vista, scenic landscape or scenic road, as designated by the town shall not exceed the height of vegetation at the proposed location. If the facility is located farther than 300 feet from the scenic vista, scenic landscape or scenic road, the height regulations described elsewhere in this ordinance will apply.

(h) Environmental Standards

- 1) Personal wireless services facilities shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.
- 2) No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- 3) Ground-mounted equipment for personal wireless services facilities shall not generate noise in excess of 50 db at the property line.
- 4) Roof-mounted or side-mounted equipment for personal wireless services facilities shall not generate noise in excess of 50 db at ground level at the base of the building closest to the antenna.
- 5) Back-up power generation equipment may exceed the required decibel levels if necessary to maintain power to the PWSF during temporary power outages.

(i) Safety Standards

- 1) All equipment proposed for a personal wireless service facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines)
- 2) Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.
- 3) To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the tower or antenna as abandoned, in accordance with Section XII at the owners expense through execution of the posted security.

(j) Modifications

A modification of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a Conditional Use Permit when the following events apply:

- a. The applicant and/or co-applicant wants to alter the terms of the Conditional Use Permit by changing the personal wireless service facility in one or more of the following ways:
  1. Change in the number of facilities permitted on the site;
  2. Change in technology used for the personal wireless service facility.
- b. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

(k) Reconstruction or Replacement of Existing Towers and Monopoles

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this Ordinance may be reconstructed, altered, extended or replaced on the same site by Conditional Use Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than twenty (20) feet.

VIII. STATE REQUIREMENTS (RSA 12-K)

All wireless carriers or their appointed agents doing business, or seeking to do business, in the Town of Newton shall:

- (a) Be allowed to construct new ground-mounted PWSF, provided that these PWSF comply with municipal regulations for maximum height or maximum allowed height above the average tree canopy height, subject to any exceptions, waivers, or variances allowed or granted by the Town.
- (b) Comply with all applicable state and municipal land use regulations.
- (c) Comply with all federal, state and municipal statutes, rules and regulations, including federal radio frequency radiation emission regulations and the National Environmental Policy Act of 1969, as amended.
- (d) Provide information at the time of application to construct an externally visible PWSF to the town of Newton and to the NH Office of State Planning, as follows:
  - 1) A copy of their license from the Federal Communications Commission (FCC) proving that they are eligible to deploy their systems in this geographical area and that this deployment falls under the jurisdiction of the federal Telecommunications Act of 1996; or a copy of their contract with a person with such a license, and a copy of that license.
  - 2) Detailed maps showing all of the current externally visible tower and monopole PWSF locations in the state within a 20 mile radius of the proposed externally visible PWSF, both active and inactive.
  - 3) Site descriptions for each of the above locations showing the antenna height and diameter, and showing all externally visible structures.
  - 4) A description of why less visually intrusive alternatives for this facility were not proposed.
- (e) A wireless carrier seeking approval to deploy a wireless communication facility shall be required to pay reasonable fees, including regional notification costs, imposed by the municipality in accordance with RSA 676:4, I (g).
- (f) Regional Notification: Any municipality or state authority or agency which receives an application to construct a PWSF which may be visible from any other New Hampshire municipality within a 20 mile radius shall provide written notification of such application and pending action to such other municipality within the 20 mile radius.

The applicant shall be responsible for determining the towns within the 20-mile radius for purposes of notification and shall provide the Planning Board with a list of these towns along with

their mailing addresses.

This notification shall include sending a letter to the governing body of the municipality within the 20 mile radius detailing the pending action on the application and shall also include publishing a notice in a newspaper customarily used for legal notices by such municipality within the 20 mile radius, stating the specifics of the application, the pending action, and the date of the next public hearing on the application. Such notice shall be published not less than 10 days nor more than 21 days prior to the public hearing date.

Municipalities within the 20 mile radius and their residents shall be allowed to comment at any public hearing related to the application. Regional notification and comments from other municipalities or their residents shall not be construed to imply legal standing to challenge any decision.

#### IX. FEDERAL REQUIREMENTS

- (a) All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna as abandoned, in accordance with Section XII, at the owners expense through the execution of the posted security.
- (b) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.

#### X. WAIVERS

- (a) General

Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with this ordinance or the purposes herein may be served to a greater extent by an alternative proposal, it may approve waivers to the ordinance.

The purpose of granting waivers under provisions of this ordinance shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Newton Zoning Ordinance (other than the terms of this ordinance), Newton Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of the ordinance.

4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - a. Topography and other site features
  - b. Availability of alternative site locations
  - c. Geographic location of property
  - d. Size/magnitude of project being evaluated and availability of co-location.

(b) Conditions

In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

(c) Procedures

A petition for any such waiver shall be submitted in writing by the applicant. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

XI. APPEALS UNDER THIS SECTION

A party aggrieved by a decision under this ordinance may appeal such decision to the New Hampshire Superior Court as provided by RSA 676:5, III and RSA 677:15, as amended.

XII. BONDING AND SECURITY AND INSURANCE

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with Section XIII, all security will be required to be maintained by the Town for the life of the tower. Bonding and surety shall be consistent with the provision in the subdivision or site plan review regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

XIII. REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

XIV. SEVERABILITY

The invalidity of any provision of any section of this ordinance shall not affect the validity of any other provision, of this ordinance, nor of the zoning ordinance as a whole.